



YAKIMA COUNTY  
WATER CONSERVANCY BOARD  
Application for Change/Transfer  
Record of Decision

|                      |  |
|----------------------|--|
| For Ecology Use Only |  |
| Received:            |  |
| Reviewed by: _____   |  |
| Date Reviewed: _____ |  |

Applicant: Frank L. Smith

Application Number: YAKI-12-02

This record of decision was made by a majority of the board at an open public meeting of the Yakima Water Conservancy Board held on July 10, 2013. The undersigned board commissioners certify that they each understand the board is responsible "to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." [WAC 173-153-130(5)] The undersigned therefore, certifies that each commissioner, having reviewed the report of examination, knows and understands the content of the report.

**x Approval:** The (board name) Water Conservancy Board hereby **grants** conditional approval for the water right transfer described and conditioned within the report of examination on July 10, 2013, and submits this record of decision and report of examination to the Department of Ecology for final review.

☐ **Denial:** The (board name) Water Conservancy Board hereby **denies** conditional approval for the water right transfer as described within the report of examination on (date report of exam was signed) and submits this record of decision to the Department of Ecology for final review.

Signed:

Jeff Stevens, Chair  
Yakima Water Conservancy Board

Date: July 10, 2013

|         |                          |
|---------|--------------------------|
| Approve | X                        |
| Deny    | <input type="checkbox"/> |
| Abstain | <input type="checkbox"/> |
| Recuse  | <input type="checkbox"/> |
| Other   | <input type="checkbox"/> |

David Brown, Board Member  
Yakima Water Conservancy Board

Date: July 10, 2013

|         |                          |
|---------|--------------------------|
| Approve | X                        |
| Deny    | <input type="checkbox"/> |
| Abstain | <input type="checkbox"/> |
| Recuse  | <input type="checkbox"/> |
| Other   | <input type="checkbox"/> |

Mark Reynolds, Board Member  
Yakima Water Conservancy Board

Date: July 10, 2013

|         |                          |
|---------|--------------------------|
| Approve | X                        |
| Deny    | <input type="checkbox"/> |
| Abstain | <input type="checkbox"/> |
| Recuse  | <input type="checkbox"/> |
| Other   | <input type="checkbox"/> |

Dave England, Board Member Alternate  
Yakima Water Conservancy Board

Date: July 10, 2013

|         |                          |
|---------|--------------------------|
| Approve | X                        |
| Deny    | <input type="checkbox"/> |
| Abstain | <input type="checkbox"/> |
| Recuse  | <input type="checkbox"/> |
| Other   | <input type="checkbox"/> |

\_\_\_\_\_  
(Name), (Title)  
(Board Name) Water Conservancy Board

Date: \_\_\_\_\_

|         |                          |
|---------|--------------------------|
| Approve | <input type="checkbox"/> |
| Deny    | <input type="checkbox"/> |
| Abstain | <input type="checkbox"/> |
| Recuse  | <input type="checkbox"/> |
| Other   | <input type="checkbox"/> |

Hand-delivered with all related documents to the Dept of Ecology Central Regional Office, and other interested parties on July 11, 2013.

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).

Ecology is an equal opportunity employer





Yakima County  
WATER CONSERVANCY BOARD  
Application for Change/Transfer  
OF A RIGHT TO THE BENEFICIAL USE OF THE PUBLIC WATERS OF  
THE STATE OF WASHINGTON



Report of Examination

**NOTE TO APPLICANT:** Pursuant to WAC 173-153-130(8), the applicant is not permitted to proceed to act on the proposal until Ecology makes a final decision affirming, in whole or in part, the board's recommendation. It is advised that the applicant not proceed until the appeal period of Ecology's decision is complete.

**NOTE TO AUTHOR:** Read the instructions for completing a water conservancy board report of examination. Use the F11 key to move through the form.

☐

Surface Water

☒

Ground Water

|                           |  |   |  |
|---------------------------|--|---|--|
| DATE APPLICATION RECEIVED | WATER RIGHT DOCUMENT NUMBER (i.e., claim, permit, certificate, etc.) G4-28570C | WATER RIGHT PRIORITY DATE<br>Nov 19, 1984 | BOARD-ASSIGNED CHANGE APPLICATION<br>NUMBER YAKI-12-02 |
|---------------------------|--|---|--|

|  |                  |               |                          |
|--|------------------|---------------|--------------------------|
| NAME<br>Frank L. Smith                           | (CITY)<br>Wapato | (STATE)<br>WA | (ZIP CODE)<br>98951-9656 |
| ADDRESS (STREET)<br>811 East Parker Heights Road |                  |               |                          |

**Changes Proposed:** ☐ Change purpose ☐ Add purpose ☐ Add irrigated acres ☐ Change point of diversion/withdrawal  
☐ Add point of diversion/withdrawal ☒ Change place of use ☐ Other (Temporary, Trust, Interties, etc.)

SEPA

The board has reviewed the provisions of the State Environmental Policy Act of 1971, Chapter 43.21C RCW and the SEPA rules, chapter 197-11 WAC and has determined the application is: ☒ Exempt ☐ Not exempt

BACKGROUND AND DECISION SUMMARY

Existing Right (Tentative Determination)

|  |                           |   |  |             |       |      |        |
|--|---------------------------|---|--|-------------|-------|------|--------|
| MAXIMUM CUB FT/ SECOND   | MAXIMUM GAL/MINUTE<br>125 | MAXIMUM ACRE-FT/YR<br>64 (Irrigation)<br>1 (Domestic) | TYPE OF USE, PERIOD OF USE<br>April 1 – October 31<br>Continuous |             |       |      |        |
| SOURCE<br>Two Wells (1 irrigation, 1 domestic)   |                           |   | TRIBUTARY OF (IF SURFACE WATER)                                  |             |       |      |        |
| AT A POINT LOCATED:<br>PARCEL NO.  | ¼                         | ¼   | SECTION  | TOWNSHIP N. | RANGE | WRIA | COUNTY |
| 191236-12002 (irr.)  | NW                        | NE  | 36   | 12          | 19 E  | 37   | Yakima |
| 191236-12001 (dom.)  | NW                        | NE  | 36   | 12          | 19 E  | 37   | Yakima |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS USED<br>E ½ and the W ½ of the NW ¼ of the NE ¼ of Section 36. |                           |   |  |             |       |      |        |
| PARCEL NO.   | ¼                         | ¼   | SECTION  | TOWNSHIP N. | RANGE |      |        |
| 191236-12002   | NW                        | NE  | 36   | 12          | 19 E  |      |        |
| 191236-12001   | NW                        | NE  | 36   | 12          | 19 E  |      |        |

Proposed Use

|   |                           |   |  |             |       |      |        |
|---|---------------------------|---|--|-------------|-------|------|--------|
| MAXIMUM CUB FT/ SECOND  | MAXIMUM GAL/MINUTE<br>125 | MAXIMUM ACRE-FT/YR<br>64 (Irrigation)<br>1 (Domestic) | TYPE OF USE, PERIOD OF USE<br>April 1 – October 31<br>Continuous |             |       |      |        |
| SOURCE<br>Irrigation Well   |                           |   | TRIBUTARY OF (IF SURFACE WATER)                                  |             |       |      |        |
| AT A POINT LOCATED:<br>PARCEL NO.   | ¼                         | ¼   | SECTION  | TOWNSHIP N. | RANGE | WRIA | COUNTY |
| 191236-12002 (irr.)   | NW                        | NE  | 36   | 12          | 19 E  | 37   | Yakima |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED<br>Both W ½ and the E ½ of the NW ¼ of the NE ¼ of Section 36. Proposal is to add adjacent parcel 191236-12001 to the east of the existing place of use in parcel 191236-12002. A showing of compliance has been filed to bring the domestic well into compliance and Ecology has been requested to combine the two into a single authorization when a superseding certificate issues. |                           |   |  |             |       |      |        |
| PARCEL NO.  | ¼                         | ¼   | SECTION  | TOWNSHIP N. | RANGE |      |        |
| 191236-12002 &<br>191236-12001  | NW                        | NE  | 36   | 12          | 19 E  |      |        |

Board's Decision on the Application

|   |                           |   |  |             |       |      |        |
|---|---------------------------|---|--|-------------|-------|------|--------|
| MAXIMUM CUB FT/ SECOND  | MAXIMUM GAL/MINUTE<br>125 | MAXIMUM ACRE-FT/YR<br>64 (Irrigation)<br>1 (Domestic) | TYPE OF USE, PERIOD OF USE<br>April 1 – October 31<br>Continuous |             |       |      |        |
| SOURCE<br>Irrigation Well   |                           |   | TRIBUTARY OF (IF SURFACE WATER)                                  |             |       |      |        |
| AT A POINT LOCATED:<br>PARCEL NO.   | ¼                         | ¼   | SECTION  | TOWNSHIP N. | RANGE | WRIA | COUNTY |
| 191236-12002  | NW                        | NE  | 36   | 12          | 19 E  | 37   | Yakima |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD |                           |   |  |             |       |      |        |



|  |         |         |               |                   |                |
|--|---------|---------|---------------|-------------------|----------------|
| Both W ½ and the E ½ of the NW ¼ of the NE ¼ of Section 36. Proposal is to add adjacent parcel 191236-12001 to the east of the existing place of use in parcel 191236-12002. Although the Board did not authorize any change in point of withdrawal under this application, a showing of compliance has been filed contemporaneously to bring the domestic well into compliance and Ecology has been requested to combine the two into a single authorization when a superseding certificate issues. |         |         |               |                   |                |
| PARCEL NO.<br>191236-12002 &<br>191236-12001   | ¼<br>NW | ¼<br>NE | SECTION<br>36 | TOWNSHIP N.<br>12 | RANGE,<br>19 E |



## DESCRIPTION OF PROPOSED WORKS

The water delivery works associated with this right are supported by two existing groundwater wells; one for irrigation (original well) and one for domestic (defacto change, corrected through Showing of Compliance).

- Irrigation; Existing 8-inch diameter well, approximately 500 feet deep with 10 to 20 HP submersible pump delivering water via 4-inch diameter mainline to sprinkler and drip irrigation system.
- Domestic: Existing 6-inch diameter well with submersible pump.

## DEVELOPMENT SCHEDULE

|  |   |  |
|--|---|--|
| BEGIN PROJECT BY THIS DATE:<br>Completed | COMPLETE PROJECT BY THIS DATE:<br>December 31, 2018 | COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:<br>December 31, 2019 |
|--|---|--|

This development schedule was selected to provide time for Frank Smith to complete the remaining construction and plantings associated with his determined future development.

## REPORT

**NOTE TO AUTHOR:** This form reflects the minimum regulatory requirements as required in WAC 173-153-130(6). In accordance with WAC 173-153-130(5), "It is the responsibility of the water conservancy board to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination." **Completion solely of the minimum regulatory requirements may not constitute a fully documented decision.**

### **BACKGROUND** [See WAC 173-153-130(6)(a)]

On December 12, 2012, Frank L. Smith of Wapato, WA filed an application for change in place of use under Water right certificate G4-28570C. The application was accepted at an open public meeting on December 13, 2012, and the board assigned application number YAKI-12-02. Copies of the change application, certificate file, and Showing of Compliance filing are provided in Appendix A.

#### *Attributes of the water right as currently documented*

Name on certificate, claim, permit: David W. Staton

Water right document number: G4-28570C

As modified by certificate of change number:

Priority date, first use: November 19, 1984

Water quantities: Qi: 125 gpm Qa: 65 acre ft./ year

Source: 1 well

Purpose of use: Single Residential Domestic and Irrigation of 18-acres

Period of use: Continuous (Domestic); April 1 through October 31 (Irrigation)

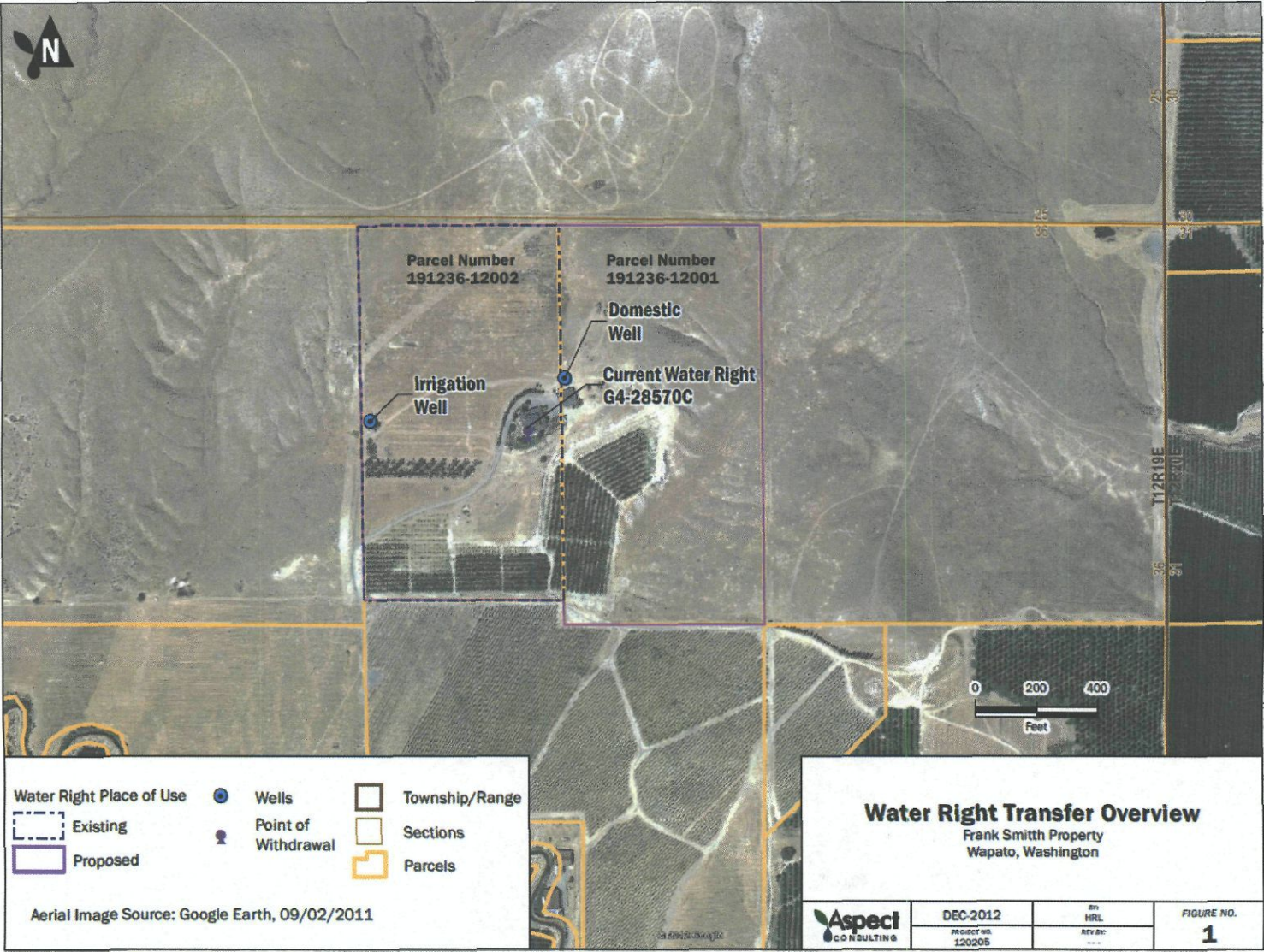
Place of use: W ½ of NW ¼ NE ¼ Section 36, Township 12 N, Range 19 E

Existing provisions: Portion of authorization pertaining to irrigation is classified as a family farm permit in accordance with Chapter 90.66 RCW, and requirement for an access port.

The purpose of this application is to modify the place of use under water right certificate G4-28570C which is owned by Frank Smith who acquired the certificate by deed in January 2001. The current place of use associated with this right includes the W ½ of NW ¼ NE ¼ Section 36, Township 12 N, Range 19 E (parcel 191236-12002). The request under this change application is to add the E ½ of NW ¼ NE ¼ Section 36, Township 12 N, Range 19 E (parcel 191236-12001) to the place of use which is property also owned by Frank Smith. Existing and proposed place of use are shown in Figure-1 below.



Figure 1: Water Right Transfer Overview



Historic use under this right is associated with two points of withdrawal that are not accurately reflected in Ecology’s records as shown on the webmap.

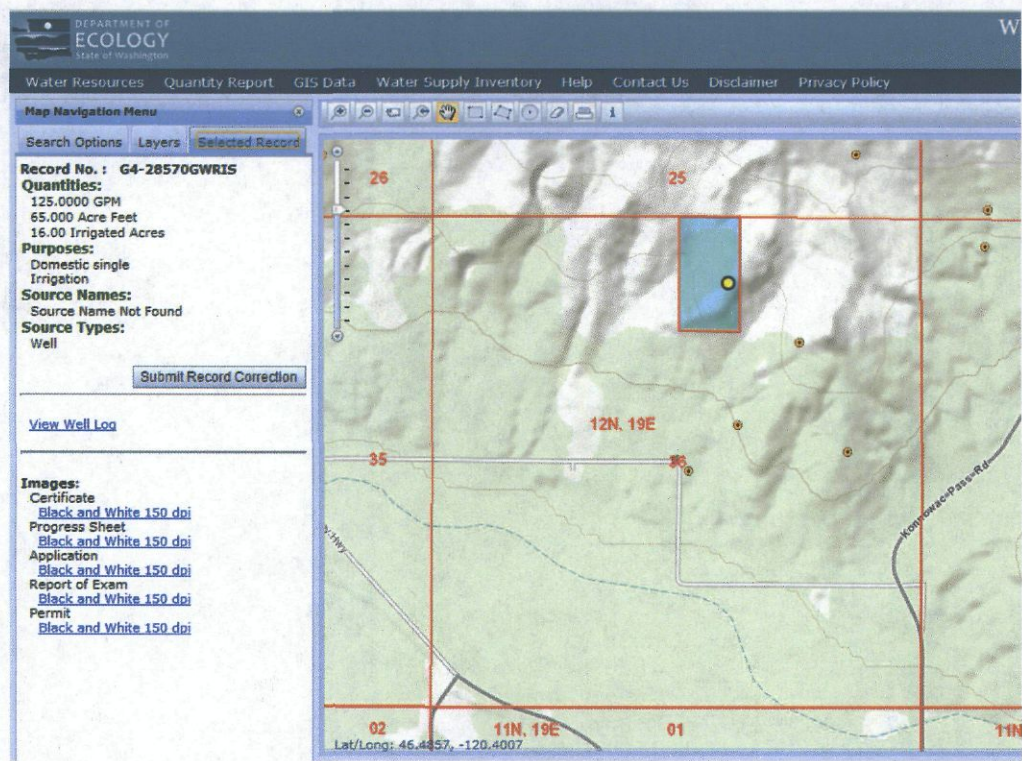
Two corrections are being made regarding the point of withdrawals associated with this certificate through showing of compliance under 90.44.100(3) filed by Frank Smith on January 22, 2013 (Appendix A).

- First, the actual point of withdrawal associated with the certificate is located approximately 700 feet south and 2,600 feet west of the northeast corner of Section 36, rather than “700 feet and 2,100 feet west” as described on the original certificate. This point of withdrawal is used by Frank Smith for irrigation supply only (not domestic, see attached well log dated 5/3/1985 in Appendix A). The certificate and original public notice describes the well location accurately as being within the W½ NW¼ NE¼ of Section 36; however, the “approximate location of diversion-withdrawal” box was not update from permit to certificate following the proof inspection. Frank Smith has requested this ministerial error be fixed when a superseding certificate issues following this change.
- Second, the point of withdrawal associated with the domestic supply portion of the water right is associated with a separate groundwater well located approximately 500 feet south and 1,980 feet west of the northwest corner of Section 36. This well was drilled in 1986, one year after the irrigation well was drilled because the original property owner wanted to separate the irrigation and domestic uses, and based on the location of the house. This additional well is in compliance with RCW 90.44.100(3) and Frank Smith has requested Ecology incorporate this finding into the superseding certificate at the end of the development schedule for this change as well.

The original point of withdrawal identified on certificate G4-28570C, the actual point of withdrawal presently used for irrigation supply, and the point of withdrawal for domestic use are located within the NW ¼ of NE ¼ of Sec 36 of T12N R19E. Both of the existing points of diversion are shown on Figure 1. A screen shot from Ecology’s webmap shows the existing place of use (red outline) and existing point of diversion in relationship to Section 36, Township 12 N, Range 19 E (Figure 2).



Figure 2: Ecology Webmap Display for certificate G4-28570C (Existing Point of Withdrawal / Place of Use)



**COMMENT AND PROTESTS** [See WAC 173-153-130(6)(b)]

Public notice of the application was given in the Yakima Herald Republic on May 30, 2013 and June 3, 2013. Protest period ended on July 3, 2013.

There were no protests received during the 30 day protest period. In addition, no oral and written comments were received at an open public meeting of the board or other means as designated by the board.

**SEPA**

This appropriation is for less than 2,250 gallons per minute and there are no other county or state permits required that trigger SEPA. Therefore this project is exempt from SEPA on the basis of WAC 197-11-800(4)

**The information or conclusions in this section were authored and/or developed by Dan Haller, Ryan Brownlee, Frank Smith, Jeff Stevens, Dave Brown, Mark Reynolds, and Dave England.**

**INVESTIGATION** [See WAC 173-153-130(6)(c)]

The following information was obtained from a site inspection conducted by Dave Brown, Dave England, and Dan Haller (consultant for Frank Smith) on January 21, 2013, technical reports, research of department records, aerial photography and conversations with the applicant and/or other interested parties.

*Aerial Photo Review*

Historic irrigation practices can be observed by viewing aerial photographs available through Google Earth® at various time intervals from 1996 through 2011. Limits of irrigation practices are outlined in black in the following figures.

The earliest photo the Board located was from 1996 from Google Earth, shown in Figure 3 below. The aerial photo shows a mix of full-canopied and developing orchard trees, along with a single-residence as described in the water right file. Frank Smith provided a declaration describing irrigation practices from 2001 to present and his understanding of the use by previous owner, David Staton (Appendix B). Based on the declaration from Frank Smith, irrigation practices in 2001 (purchase date) correspond to those shown in 1996.



Figure 3: 1996 USGS Aerial Photograph



The next photo available is in 2003, roughly 2-years after the Frank Smith took possession of the property. The aerial photograph shows clearing activities in the north and south regions of the place of use and a subsequent temporary reduction in irrigated practice.

Figure 4: April 23, 2003 USGS Aerial Photograph





Aerial photography in 2005 shows similar irrigation practices of 2003 with the inclusion of new developing orchard in the southern region corresponding to an area that had been previously cleared. At that time, developing irrigated orchard is shown to the east of the authorized place of use on parcel 191236-12001 (E ½ of NW ¼ NE ¼ Section 36, Township 12 N, Range 19 E), which is the reason for this change proposal.

Figure 5: 2005 USGS Aerial Photograph



Aerial photography in 2006 shows an overall reduction in irrigated orchard when compared to 2005 while showing continued expansion of irrigated orchard to the east of the authorized place of use (Figure 6).

Figure 6: 2006 USGS Aerial Photograph





Aerial photography in 2009 shows that remaining orchard remnants in the northern section have been removed between 2006 and 2009 (Figure 7). Based on the Frank Smith declaration, a small number of additional trees (20) were planted in the southern portion as well that is not easily visible from the aerial photography.

Figure 7: 2009 USDA Aerial Photograph



Aerial photography in 2011 shows an increase in irrigated orchard in the southern portion of the authorized place of use (Figure 8).

Figure 8: 2011 USGS Aerial Photograph





The acreage irrigated in each year was delineated using GIS. A summary of irrigated acreage (by year) corresponding to delineated areas of Figures 3 through 8 are provided in Table-1.

Table-1 Historical Irrigated Acreage

| Year       | Irrigated Acreage |
|------------|-------------------|
| Authorized | 16                |
| 1996       | 17.7              |
| 2002       | 17.7              |
| 2003       | 7.1               |
| 2005       | 12.5              |
| 2006       | 7.9               |
| 2009       | 7.9               |
| 2011       | 8.8               |

Board Site Examination

Board members Dave Brown and Dave England, along with Frank Smith and consultant Dan Haller, conducted a site investigation on January 21, 2013. A copy of the Board’s Site Visit Report is provided in Appendix C. The Board:

- Interviewed Frank Smith regarding historic irrigation practices.
- Reviewed aerial photographs and compared them to on-site features.
- Discussed Frank Smith’s farm redevelopment plan.
- Located infrastructure installed by Frank Smith in furtherance of this plan (wind machine, new irrigation infrastructure).
- Looked wellheads, irrigation system, frost pond test pit, location of future wind machine and trees.
- Took photographs of the site.

Frank Smith Declaration

The Board reviewed a comprehensive declaration provided by Frank Smith regarding his farm redevelopment plan (Appendix B). The declaration describes Frank Smith’s consultation with Washington State University, identification of a plan to redevelop his apple orchard into a cherry orchard to take advantage of a microclimate that allows cherries to be harvested several weeks earlier than local competitors, and investments to implement that plan. Frank Smith’s plan was initiated following termination of a lease by the former manager of the property, who had farmed the property for several years under an agreement with previous owner David Staton, and continued by Frank Smith.

Crop Irrigation Requirements, Crop Water Use, and Domestic Use

The original certificate was issued fairly recently (1986) and the associated Report of Examination (ROE) found a crop water duty of 4 acre-feet per acre to be reasonable. The Washington Irrigation Guide (WIG) lists a crop irrigation requirement for apples without cover of 32.32 inches and for cherries without cover of 32.76 inches, which equates to a sprinkler efficiency of approximately 70%, which is reasonable.

The original ROE also identified one acre-foot of water as reasonable for domestic water needs. The Board verified the house is still in use, has a large yard and landscaping (see photos), and one acre-foot as a reasonable quantity of water for this use.

Tentative Determination

In order to make a water right change decision, the Board must make a tentative determination on the validity and extent of the right. The Board has made the tentative determination as displayed upon the first page of this report.

Based on the history of water use described herein, the Board finds:

- There was continuous use of the right for 16 acres of irrigation and domestic use for 1 home from before Certificate G4-28570C issued in 1986 until the spring of 2002 when trees were removed and Frank Smith began his farm redevelopment plan.
- From 2002 to present the extent of the Certificate G4-28570C has consisted of domestic use for one house, associated irrigated landscaping and irrigated orchard. Partial nonuse of the water right is evident from 2002 to present.

Because the nonuse period is short (2002 to 2013, or 11 years) and because there has been no intent to abandon the right identified during the Board’s review of the file, observable actions, site visit and interviews with the applicant, the Board must consider whether relinquishment of the unused portion has occurred. This will help the Board determine the appropriate 5 year period to consider when tentatively determining the extent and validity of the water right. The Board conducted an investigation of potential relinquishment exceptions under RCW 90.14.140.

Previous activities performed by the applicant have documented the existence of a determined future development (DFD) for this right which commenced with the establishment of a fixed plan for redevelopment of the irrigated orchard in 2002. The Board relied on Frank Smith’s declaration and attachments (including a corroborating letter from the Washington State University extension agent who provided professional advice in 2002 to convert to a cherry orchard) as evidence of the plan. RCW 90.14.140(2)(c) states that there shall be no relinquishment of a water right if it is claimed for a determined future development.



Ecology adopted Policy 1280 that provides guidance to conservancy boards on criteria for determined future developments. These criteria are based on Ecology's interpretation of case law. In order to meet the threshold for the determined future development exception:

1. The plan must be of sufficient scope to warrant more than 5 years to complete.
2. The plan must be put forth by a party with vested interest in the water right.
3. The water right holder must have a firm and definitive plan.
4. The plan must be fixed prior to the end of the 5-year period of nonuse.
5. Some affirmative steps towards realization of the fixed and definitive plan must be evident within 15-years of last beneficial use.

The applicant, Frank Smith, who is also the water right holder with vested interest in the water right, developed a firm and definitive plan for redevelopment of the place of use in 2002 which coincides with the commencement of partial nonuse period which satisfies the aforementioned criteria 1, 2 and 3.

The applicant has diligently pursued redevelopment of the place of use under the fixed redevelopment plan between 2002 and present, as described below satisfying the aforementioned criteria 4 (see Frank Smith Declaration for additional detail, Appendix B):

- 2002: The applicant fixed a plan to redevelop 16-acres of existing irrigated fruit trees (apples, apricots and cherries) to 16 acres of tieton cherries.
- 2002: A majority (10.6 acres) of existing irrigated trees were removed and 473 tieton cherry trees were ordered for planting in the subsequent spring planting season of 2003. A TK-85 crawler and Bushhog 307 rotary mower were purchased, and soil sterilization was performed in anticipation of planting.
- 2003: 473 tieton cherry trees were planted.
- 2004: 550 tieton cherry trees were ordered and land was graded in anticipation of plantings for 2005
- 2005: Soil sterilization was performed in anticipation of planting and 550 tieton cherry trees were planted.
- 2006: 31 tieton cherry trees were ordered.
- 2007: 31 tieton cherry trees were planted.
- 2009: An Orchard Rite 2600 wind machine for frost protection was purchased and 20 tieton cherry trees were planted.
- 2010: Plans for a pond for frost protection were revised and 220 tieton cherry trees were planted.
- 2011: An Orchard Rite wind machine for frost protection was purchased and property was refinanced with Northwest Farm Credit Services.
- 2012: 550 tieton cherry trees were ordered for planting in 2013; however the order was cancelled pending resolution of water right place of use. A change application was filed with the conservancy board.

Project scope is a case-specific element of a determined future development. The Board notes that Frank Smith is a doctor, not a full-time farmer. When the former lessee terminated the lease, Frank Smith suddenly had to learn and budget for a new part-time career as an orchardist. Frank Smith's consultation with Washington State University on the type of crop that should be grown to maximize beneficial use of water on the land was reasonable. Frank Smith's incremental progress in redeveloping the property is reasonable based on his circumstances.

Ecology and the Courts have recognized decisions where DFD's are associated with farm redevelopment. The Orondo Fruit Company PCHB case demonstrated that scope is project specific and a DFD to rotate to a new cherry varietal is reasonable. Frank Smith's DFD to replant into a cherry crop that provides a market advantage is similar to the Orondo Fruit case DFD.

Based on a DFD in fixed 2002, the extent and validity of the water right Certificate G4-28570C would be based upon the highest use from the 5-year period 1997 to 2002. Based on the beneficial use history, this would be consistent with the use in 2002 of 16 acres of irrigation and one residence (note the GIS analysis showed 17.7 acres, slightly larger than that authorized., the excess acreage is largely associated with lawn under the 1 acre-foot of domestic use). Metered water use in the future will verify compliance with the 65 acre-feet total water withdrawals authorized.

Evident in the photos (e.g. see Figure 5 through 8) and persisting in the target year of the tentative determination (2002), the Board notes that a small defecto change in place of use for irrigation appears to have occurred (on Frank's adjacent parcel to the east), which this change seeks to address. Consistent with Ecology Policy 1120 on Tentative Determinations:

*"When evaluating unauthorized changes to water rights, the department generally considers beneficial use to be the measure of the right, even if some attributes of the right may not be consistent with the current authorization."*

In this case, the Board notes finds that the record supports the irrigation of 16 acres under the right.

#### *Proposed project plans and specifications*

The proposed project plans include redevelopment of 16-acres of irrigated fruit trees (from a mixture of apple, apricot and cherry bing cherries, to tieton and bing cherries). There are no plans for redevelopment of 2-acres of irrigated landscape and residential domestic use. Redevelopment of the place of use as described has been diligently pursued between the time period 2002 to present, with planned completion of redevelopment by 2019.

The project plans involve use of water under this right to support redevelopment outside the existing place of use into the proposed place of use to the east.



Other water rights appurtenant to the property (if applicable)

There are no other water rights appurtenant to the property or overlapping the place of use associated with this authorization.

Impairment

The proposed transfer seeks a place of use change, and is not permitted to impair other water rights under RCW 90.44.100. No private water right holder has asserted any impairment associated with the proposed change. The farming will continue on adjacent land, which will not affect return flow or consumptive use under the water right. No instream flow will be impaired as a result of the transfer.

Public Interest (groundwater only)

The proposed transfer seeks a place of use change, and is not permitted to be detrimental to the public interest under RCW 90.44.100. Farming is a beneficial use and provides job and tax revenue to Yakima County. The land is appropriately zoned for this use, is in private ownership, and is largely surrounded by similar agricultural uses. No party has raised any public interest concerns, and the Board is unaware of any public policy that conflicts with the proposed change.

The information or conclusions in this section were authored and/or developed by Dan Haller, Ryan Brownlee, Frank Smith, Jeff Stevens, Dave Brown, Mark Reynolds, and Dave England.

CONCLUSIONS [See WAC 173-153-130(6)(d)]

Tentative determination (validity and extent of the right)

The Board finds Certificate G4-28570C is valid based on the quantities described on Page 1.

Relinquishment or abandonment concerns

No relinquishment or abandonment has occurred. Partial nonuse is excused under a DFD.

Consideration of comments and protests and SEPA

No comments or protests were received. SEPA was complied with.

Impairment

The Board found no impairment to existing water rights would occur as a result of this change.

Public Interest

The Board found no detriment to the public interest would occur as a result of this change.

DECISION [See WAC 173-153-130(6)(e)]

The following table summarized the change in place of use of Certificate G4-28570C for Frank Smith with a priority date of Nov 19, 1984

|  |  |                           |         |   |                                 |  |                |                   |
|--|--|---------------------------|---------|---|---------------------------------|--|----------------|-------------------|
| MAXIMUM CUB FT/ SECOND   |  | MAXIMUM GAL/MINUTE<br>125 |         | MAXIMUM ACRE-FT/YR<br>64 (Irrigation)<br>1 (Domestic) |                                 | TYPE OF USE, PERIOD OF USE<br>April 1 – October 31<br>Continuous |                |                   |
| SOURCE<br>Two Wells (1 irrigation, 1 domestic)   |  |                           |         |   | TRIBUTARY OF (IF SURFACE WATER) |  |                |                   |
| AT A POINT LOCATED:<br>PARCEL NO.<br>191236-12002 (irr.)   |  | ¼<br>NW                   | ¼<br>NE | SECTION<br>36   | TOWNSHIP N.<br>12               | RANGE<br>19 E  | WRIA<br>37     | COUNTY.<br>Yakima |
| LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED AS APPROVED BY THE BOARD  |  |                           |         |   |                                 |  |                |                   |
| Both W ½ and the E ½ of the NW ¼ of the NE ¼ of Section 36. Proposal is to add adjacent parcel 191236-12001 to the east of the existing place of use in parcel 191236-12002. |  |                           |         |   |                                 |  |                |                   |
| PARCEL NO.<br>191236-12002 &<br>191236-12001   |  | ¼<br>NW                   | ¼<br>NE | SECTION<br>36   | TOWNSHIP N.<br>12               |  | RANGE,<br>19 E |                   |

The information or conclusions in this section were authored and/or developed by Dan Haller, Ryan Brownlee, Frank Smith, Jeff Stevens, Dave Brown, Mark Reynolds, and Dave England.

PROVISIONS [See WAC 173-153-130(6)(f)]

Conditions and limitations



- 1. This authorization shall in no way excuse the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations including those administered by other programs of the Department of Ecology.
- 2. Upon satisfaction of the development schedule listed on the Department of Ecology’s Final Order of YAKI-12-02, notification thereof to the Department of Ecology and fulfillment of all requirement of law, a superseding certificate shall be issued to each applicant by the Department of Ecology.
- 3. An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.
- 4. Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.
- 5. Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".
- 6. Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year. Reported water use data shall be submitted via the Internet or by using forms available at the Central Regional Office of the Department of Ecology in Yakima. To set up an Internet reporting account, access <https://fortress.wa.gov/ecy/wrx/wrx/Meteringx/>. If you have questions or need forms, contact the Central Regional office.

Construction Schedule


| DEVELOPMENT SCHEDULE                     |   |  |
|--|---|--|
| BEGIN PROJECT BY THIS DATE:<br>Completed | COMPLETE PROJECT BY THIS DATE:<br>December 31, 2018 | COMPLETE CHANGE AND PUT WATER TO FULL USE BY THIS DATE:<br>December 31, 2019 |

This development schedule was selected to provide time for Frank Smith to complete the remaining construction and plantings associated with his determined future development.

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The undersigned board commissioner certifies that he/she understands the board is responsible “to ensure that all relevant issues identified during its evaluation of the application, or which are raised by any commenting party during the board's evaluation process, are thoroughly evaluated and discussed in the board's deliberations. These discussions must be fully documented in the report of examination.” [WAC 173-153-130(5)] The undersigned therefore, certifies that he/she, having reviewed the report of examination, knows and understands the content of this report and concurs with the report’s conclusions.

Signed at Yakima, Washington  
This Date day of Month, Year  
this 10th day of July, 2013

  
\_\_\_\_\_  
Board Representative's Name, Board Representative  
Yakima County Water Conservancy Board  
Jeff Stevens, Chairman

If you have special accommodation needs or require this form in alternate format, please contact 360-407-6607 (Voice) or 711 (TTY) or 1-800-833-6388 (TTY).  
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